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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.V., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Appellant,

v.

A.V.,

Defendant and Respondent.

E070934

(Super.Ct.No. RIJ1400085)

OPINION

APPEAL from the Superior Court of Riverside County. Mark E. Petersen, Judge.

Affirmed.

Michael Hestrin, District Attorney, Robert A. Hightower, Deputy District
Attorney for Plaintiff and Appellant.

Steven L. Harmon, Public Defender, Laura Arnold, Deputy Public Defender for
Defendant and Respondent.

Plaintiff and appellant the People of the State of California appeal the dismissal of a Welfare and Institutions Code section 602¹ petition (Petition) filed against defendant and respondent A.V. (Minor). In 2014, the Petition was filed against Minor accusing him of two violations of Penal Code section 288, subdivision (a) when he was between 10 and 13 years old. Minor's counsel declared a doubt as to Minor's competency; the proceedings were ongoing for four years. In 2018, the juvenile court declared Minor incompetent pursuant to Welfare and Institutions Code section 709 and subsequently dismissed the Petition pursuant to Welfare and Institutions Code section 782.

On appeal, the People contend the juvenile court applied the wrong standard in determining Minor's competency; it erred by failing to refer the matter to the Riverside Inland Regional Center (IRC) as required by section 709, subdivision (f); and it erred by dismissing the Petition pursuant to section 782 without making the requisite written findings on the record that such dismissal was in the interests of justice and the welfare of Minor required dismissal.

We affirm the order dismissing the Petition pursuant to section 782.

FACTUAL AND PROCEDURAL HISTORY

A. FILING OF THE PETITION

Minor was born in September 2000. On January 24, 2014, the Riverside County District Attorney filed a first petition in the juvenile court alleging that Minor came within the provisions of Welfare and Institutions Code section 602 by reason of his

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

commission of four felony violations of Penal Code sections 288, subdivision (b), committing lewd and lascivious acts upon another through the use of force, violence, duress, menace or fear of great bodily injury. The acts were alleged to have been committed between August 8, 2011, and June 25, 2013. On June 24, 2014, the Petition was filed alleging only two felony violations of Penal Code section 288, subdivision (a), lewd and lascivious acts committed on a child under the age of 14 years, between August 8, 2011, and June 25, 2013. Minor remained in the custody of his parents.

Briefly, the Petition was based on an event occurring on June 25, 2013, during which Minor was alleged to have pulled down his pants and had the seven-year-old victim (JD1), his cousin, orally copulate him. JD1 reported that Minor had done this to him an additional time before June 25, 2013. JD1 did not specify the date. Further, another of Minor's cousins (JD2) reported that Minor also had JD2 orally copulate him and ejaculated in JD2's mouth. JD1 was present during this act. Minor admitted during a police interview that he had JD1 and JD2 orally copulate him.

The probation department conducted an evaluation of Minor. It was recommended he be declared a ward of the court and placed outside the home. They recommended intensive sexual offender counseling. It was recommended that probation and deferred entry of judgment pursuant to section 790 be denied. The juvenile court agreed with the probation department that deferred entry of judgment and probation were not appropriate. On September 8, 2014, the matter was set for a contested jurisdictional hearing.

B. COMPETENCY EVALUATIONS

Counsel for Minor declared a doubt as to Minor's competency. Dr. Robert L. Suiter was appointed pursuant to section 709 to determine Minor's competency. After administering tests and interviewing Minor, Dr. Suiter concluded that Minor did not have a mental disorder. However, he had "considerable limitations with his reasoning and problem-solving abilities." He was in the bottom five percent of similar adolescents. Minor was aware of his attorney and the role of the court. Minor lacked knowledge on what role the prosecutor had and the parameters of a plea bargain. Dr. Suiter concluded, "[Minor] is incompetent to stand trial but only on a most limited basis which is subject to remediation."

The juvenile court found that Minor was incompetent to stand trial and referred Minor to the probation department for a "Competency Remediation Plan." The People did not oppose the finding.

The Competency Remediation Plan was filed on October 31, 2014. Riverside County Mental Health had no services that would help Minor. On October 29, 2014, IRC indicated that Minor would not qualify for their services because he had not been diagnosed with mental retardation, an intellectual disability or autism. The Riverside County Office of Education also did not have any services that would help Minor regain competency. The probation department recommended Minor's counsel explain the judicial process to Minor.

At a hearing on November 12, 2014, the juvenile court disagreed that Minor's counsel should be tasked with helping Minor regain his competence. The juvenile court

ordered the probation department to use its funds to engage the services of an appropriate expert to help Minor regain his competency.

Minor was sent to a facility entitled Kids N' Crime and was educated on the judicial system. During the first session to educate Minor as to the judicial process, it was clear he had "significant issues with memory and retention." He was given testing on the judicial system and received a score of 13 out of 20; those he missed were because Minor forgot what he was taught. The evaluator concluded Minor had considerable memory and retentions issues. Minor appeared to be delayed in his problem-solving abilities and deductive reasoning. However, the evaluator determined Minor was able to comprehend and assist his attorney in his defense. It was recommended that he be referred for another psychological evaluation.

On February 10, 2015, the juvenile court ordered another evaluation from Dr. Suiter. The juvenile court also, at the recommendation of Minor's counsel, referred Minor to the IRC for evaluation to assess "his eligibility for consumer services based on his developmental condition."

Dr. Suiter reevaluated Minor on February 21, 2015; his report was filed on March 10, 2015. Minor insisted he was unaware of the nature of the charges against him despite explaining what had occurred during the initial evaluation with Dr. Suiter. He still did not know the role of the prosecutor but was aware the judge would determine if he was guilty. Another test was administered and Minor scored very low as to abstract reasoning ability. A measure of his everyday reasoning or common sense showed he was mildly impaired.

Dr. Suiter found Minor's claims that he was unaware of the nature of the charges and the role of the prosecutor "incredulous." Dr. Suiter concluded, "Given the presentation of [Minor] with this evaluation, this examiner cannot state to a degree of medical certainty he is trial competent. Nonetheless, as noted above, this examiner is incredulous he does not know the nature of the charges against him or the role of the District Attorney."

A preliminary report was prepared by IRC, which was not initially included in the record. In that report, IRC apparently concluded that Minor had a developmental disability that made him eligible for IRC services. However, the final decision would be made by the IRC's interdisciplinary team and such determination had not been completed.

On May 20, 2015, the IRC interdisciplinary team report was filed. The trial court found the report to be confusing. The trial court ordered the probation department to prepare a report clearly setting forth the recommendation with respect to competency restoration services.

A new report prepared by IRC was filed on June 12, 2015. Minor was found eligible for IRC services; he had been being treating since May 21, 2015. He could be placed in a 12-week program, called Get S.A.F.E (SAFE), to regain his competency. The matter was heard on June 22, 2015. The juvenile court approved SAFE.

Updates were provided regarding Minor's progress in SAFE. Minor questioned why he had to follow the juvenile court's orders, because he was innocent. He had not

made much progress in learning how he would be able to help his attorney. Minor showed a lack of interest in learning.

A report from IRC was submitted to the juvenile court on April 18, 2016.² Minor had shown no improvement in his understanding of the judicial system. He was becoming increasingly aggravated and frustrated during training sessions. IRC was not optimistic that any improvement could be made as Minor showed a lack of effort and he was frustrated with the training. An evaluation by a licensed clinician was necessary to determine if there was a substantial probability Minor could regain his competency. The probation department had trouble contacting Minor and his parents during this period. Minor had been absent from school numerous times. A further hearing was recommended.

On April 19, 2016, the matter was heard again. A psychological evaluation was ordered. Minor was to continue services at IRC. Further, he was ordered to attend appointments or risk being placed in juvenile hall. The “Juvenile Competency Attainment Team” was ordered to provide a report. Dr. Michael E. Kania was appointed to evaluate Minor.

Dr. Kania had previously evaluated Minor in 2014. He reviewed all of the information from IRC and the other evaluators. Dr. Kania interviewed Minor. Minor’s behavior was very different from when he was first evaluated and when he was evaluated by Dr. Suiter. Minor now claimed not to remember any of the events involving his

² The matter was delayed due to a mass shooting at the building where IRC was located.

cousins. He was very uncooperative. He even claimed he knew nothing about where he attended school or where he previously attended school. He denied ever meeting with anyone from IRC. During the evaluation, he claimed he had no idea where he was living or the year. He had no idea if he had an attorney or the role of the judge and prosecutor.

Dr. Kania's concluded that "the minor's refusal to cooperate in this examination, or with his attorney, is a volitional choice, and reflects his understanding that the present charges are serious and that he could face serious consequences if it is determined that he committed these acts." Dr. Kania further found "the minor is (1) able to understand the nature and purpose of the proceedings and his interest in these proceedings; and (2) able to assist his attorney in the conduct of a defense in a rational manner."

The probation department submitted a report. IRC had reported SAFE had not been very successful. Minor appeared confused when questions were asked and had not made much progress. The probation department concluded that Minor was deliberately attempting to claim incompetency in order to avoid trial. The probation department recommended that delinquency proceedings be reinstated and that Minor be detained in juvenile hall pending further orders. IRC had attempted to put together Minor's individual program plan (IPP) but Minor and his parents had not attended the planning meeting. IRC would attempt to set up the IPP.

On September 28, 2016, the juvenile court declared Minor competent and again set a date for the contested jurisdictional hearing. IRC did not have to continue with SAFE. The matter was continued several times and finally was set for hearing on August 28, 2017.

C. FILING OF THE MOTION TO DISMISS

On August 9, 2017, Minor's counsel filed a motion to dismiss the Petition pursuant to section 782 (Motion). In July 2017, Minor's counsel retained Dr. Robert Leark, a neuropsychologist, who reviewed all the reports of the prior evaluators and did his own investigation. He opined that Minor's testing showed he had a “ ‘defect in complex speeded reasoning that impairs his ability to inhibit thoughts and to shift his attention to alternative tasks within speeded decision making. These present serious problems for him within the courtroom setting.’ ” Dr. Leark concluded, “His deficits in speeded cognitive processing combined with deficits in memory and reasoning directly impact his ability to reason sufficiently to understand the decisions at hand. These cognitive deficits and defects impair his ability to engage in reasoned choice of legal strategies and options, (i.e., decision making). The deficits and defects, also impact his ability to track events as they unfold within the courtroom. These deficits impair his ability to reasonably assist his defense.” Minor would need one-on-one counseling, regular medical care, psychological assistance and stable housing in order to approach even the possibility by the age of 21 that he could be equal to his peers.

Minor's counsel argued the section 602 petition should be dismissed because Minor was incompetent to stand trial and would not regain his competency in the near future.

The Motion included the original evaluation performed by Dr. Kania on May 15, 2014. Minor had denied the allegations to Dr. Kania and would not admit that he made the comments to the police as indicated in their report. Minor explained in detail his

background information, including the number of siblings he had and the places he had lived. Dr. Kania indicated that during the interview, Minor frequently provided responses unrelated to the questions asked of him and his responses were immature. He appeared to have low-average intellectual functioning. His attention and concentration were good but his comprehension was below average.

Minor accused the victim of touching him. He also accused the two victims of having inappropriate sexual relations with each other and their older brothers. They were lying about him sexually abusing them. Dr. Kania had a hard time following Minor's responses to questions and opined that he may have not have understood the police when he admitted the allegations. Dr. Kania concluded that Minor was credible in his denials of any inappropriate sexual behaviors with the victims. Dr. Kania had concerns about Minor's intellectual abilities. It would make it difficult for him to assist in his defense.

Also attached to the Motion was the original determination of a developmental disability by IRC. Julie Yang, a psychologist at IRC, interviewed and administered a number of tests on Minor. The results of the testing showed that Minor was in the extremely low range of intellectual functioning. He was likely to have difficulty understanding vocabulary and concepts, remembering things, and listening for long periods of time. It was concluded he had a developmental disability and was eligible for IRC services.

Also attached to the Motion were the reports of Dr. Suiter, the second report of Dr. Kania, other IRC reports and the probation department reports.

D. COMPETENCY FINDING

On August 28, 2017, Minor's counsel again expressed a doubt as to Minor's competency based on Dr. Lark's report. The juvenile court appointed another psychologist to determine whether Minor suffered from a developmental disability, developmental immaturity, or mental disorder; was competent to stand trial; and if he was not competent, what services should be furnished to Minor to regain competency and whether he was capable of regaining competency in the foreseeable future. The Motion was withdrawn without prejudice awaiting a determination of his competency.

Dr. William H. Jones evaluated Minor and submitted a report. He reviewed all of the records and previous evaluations. Minor was 17 years old by the time he was interviewed by Dr. Jones. Minor stated he was struggling in school. Minor cooperated with Dr. Jones. He had a depressed, flat affect. He was very anxious. He had indications of very limited short-term memory and retention. Minor understood who his attorney was and the role of the judge; he understood the prosecutor was against him. He also understood he was being charged with molesting his younger cousin.

Dr. Jones concluded that Minor suffered from "a Developmental Disability, involving weakness in receptive and expressive speech, attention and concentration, weakness in short term memory, and of a slowness in processing information. He also has a developmental immaturity. Both of these factors mildly impair the minor's competence to stand trial." However, he concluded that Minor was competent to stand trial.

On March 5, 2018, the matter was set for a competency hearing. Minor's counsel intended to present the testimony of Dr. Leark; the People, Dr. Jones. The People also submitted on all of the reports. Dr. Leark testified for Minor first and stated that Minor was not competent to stand trial. He would not be equal with his peers in understanding any time in the near future. The People presented the testimony of Dr. Jones. Dr. Jones reiterated Minor was competent to stand trial.

At the end of the hearing, Minor's counsel argued that Minor was not competent to stand trial; that even Dr. Jones admitted Minor may not understand the trial if it went too fast. Minor was not competent to rationally assist counsel. The People responded that Minor understood the consequences of the trial and was competent to proceed to trial. The People questioned the qualifications of Dr. Leark. The matter was taken under submission.

On March 16, 2018, the juvenile court issued its ruling on competency. It first set forth the timeline of the case and the opinions of the doctors. After setting forth the timeline, the juvenile court stated, "I would first point out that the burden of proof in this particular incident is on the minor to prove—or Minor's counsel—to prove that the minor's not competent by a preponderance of the evidence. That's the *R.V.* case, the 2015 case found at 61 Cal.4th 181." The juvenile court then indicated that Minor committed his crimes between the ages of 10 and 12. The juvenile court expressed concern under Penal Code section 26, assuming the matter proceeded to a jurisdictional hearing, that the People would not be able to prove Minor understood the wrongfulness of his acts.

The juvenile court referred to Dr. Jones's report, which included a determination that Minor had a developmental disability. Further, Dr. Jones agreed with Dr. Leark that Minor tested low on standardized tests. The juvenile court concluded that Dr. Jones indicated that Minor was "marginally competent." Dr. Leark opined Minor was incompetent. The juvenile court also recognized the opinions of other evaluators. They all agreed that Minor had some cognitive deficits.

The juvenile court indicated it was in the unenviable position of deciding which evaluator to believe. It concluded, "Based on the information given and provided to this Court, I believe it cannot be said with any degree of confidence that this minor is competent to stand trial. In other words, based on all of the records and testimony and evidence proffered, this Court is not convinced that the minor's competence has been restored. There is far too much doubt. [¶] The Court is convinced that the minor suffers cognitive defects and deficiencies. The Court does not believe it would be appropriate to roll the dice and risk the minor going through a trial he does not understand." Substantial evidence supported that Minor was not competent to stand trial.

E. RULING ON MOTION TO DISMISS

The juvenile court suspended proceedings and set the matter for an OSC regarding dismissal of the case, e.g. revisit the Motion. The parties were to brief whether dismissal was appropriate and address Penal Code section 26.

The People filed their brief contending the evidence supported that Minor could regain his competency in the foreseeable future. He was older and he just needed to

cooperate with IRC competency training. Further, Minor had the capacity to understand the wrongfulness of his conduct within the meaning of Penal Code section 26.

Minor's counsel also submitted a brief that Minor was unable to understand the wrongfulness of his conduct since he allegedly committed the crimes when he was between 10 and 12 years old and his confession was coerced. Further, the action should be dismissed pursuant to section 782 because he was incompetent and would not regain competency in the near future.

A first hearing was held on May 4, 2018. The juvenile court had read the briefs of the parties. The juvenile court wanted to discuss what the next course of action would be if the Petition was dismissed.

The juvenile court first noted that Minor would turn 18 years old in four months. There were two options: (1) order Minor to participate in remediation therapy to regain his competency; or (2) dismiss the case based on the failure to go forward for over four years. The juvenile court noted that there was an issue under Penal Code section 26. The juvenile court commented, "So we just have a whole host of issues here that the Court needs to work through and determine what's the best course of action for the youth. We certainly want to consider and have the best interest of the minor in mind as we all make decisions as well as the protection of the community and the safety of the community." The juvenile court noted that there had not been any new allegations of inappropriate conduct by Minor since the filing of the Petition.

Minor's counsel argued Minor would not regain his competency in the foreseeable future and dismissal was warranted. The juvenile court continued the matter in order to again look to all of the evidence in the case.

A hearing was held on May 18, 2018. Representatives from the probation department were asked by the juvenile court if any further remediation services would be helpful to Minor. A representative responded that remediation services were very limited. The juvenile court gave the parties one more opportunity to discuss any issues. The parties argued about Minor's competency.

In issuing its ruling, the juvenile court noted several statutes. First, Welfare and Institutions Code section 202, which referred to the best interests of the public and Minor. Welfare and Institutions Code Section 709 regarding competency was also considered. The juvenile court reiterated it was concerned that the People could not show under Penal Code section 26 that Minor knew the wrongfulness of his acts. The juvenile court noted that in four years, there had been no improvement in Minor's competency. The juvenile court was doubtful Minor could attain competency in the foreseeable future. The juvenile court was "at a loss" as to what could be done for Minor.

The juvenile court exercised its discretion to dismiss the Petition pursuant to section 782. It found, "That's not because of the fact that the minor does not need rehabilitation. It's because I'm of the mindset that he's not going to attain competency in the reasonable future. Having tried it in four years and four months, I think we're at that point where a decision needs to be made." The juvenile court then asked Minor's father

if Minor was receiving any counseling and was advised that Minor received counseling at school. The juvenile court encouraged the family to seek out therapy and counseling.

The minute order from the hearing provided, “The petition is dismissed, under 782 WIC, for reasons stated.” The People appealed pursuant to section 800, subdivision (b)(4).

DISCUSSION

The People contend (1) the juvenile court applied an incorrect legal standard in ruling on Minor’s competency; (2) the juvenile court erred by failing to refer the matter to the IRC as Minor was previously found to have a developmental disability; and (3) the juvenile court erred by failing to make the requisite findings pursuant to section 782.³

A. FINDING OF COMPETENCY AND IRC REFERRAL

The People contend the juvenile court erred by applying the wrong legal standard when ruling on Minor’s competency. In particular, the juvenile court shifted the burden of proof to the People to prove Minor was competent.

Section 709, which establishes the procedures for juvenile competency proceedings, provides as follows: “[A] minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her.” A hearing

³ The People argue the appeal could be moot because Minor reached the age of 18, and the Petition was dismissed. The dismissal did not end the court’s jurisdiction because the People appealed. The issue is not moot because jurisdiction turns on Minor’s age when he committed the crimes, not when the issue is litigated.

is required when “substantial evidence raises a doubt as to the minor’s competency.” (§ 709, subds. (a) & (b).) The court must “appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor’s competency.” (*Id.* at subd. (b).) “If the minor is found to be incompetent by a preponderance of the evidence, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction,” during which time the court may order services to assist the minor in gaining competency. (*Id.* at subd. (c).)

In *In re R.V.* (2015) 61 Cal.4th 181 (*R.V.*), the California Supreme Court found in addressing section 709 that “[T]he Legislature did not intend the enactment of section 709 to alter the existing practice of presuming a minor competent to undergo a wardship proceeding and imposing on the party claiming otherwise the burden of proving incompetency by a preponderance of the evidence.” (*Id.*, at p. 196.)

Here, the juvenile court stated on the record that Minor had the burden of proving incompetence, citing to *R.V.* The People insist that despite this statement on the record, the juvenile court in fact put the burden on them to prove competency. They rely on comments by the juvenile court that “it cannot be said with any degree of confidence that this minor is competent.” Further, it made comments that there was “too much doubt” and that it would be unwise to “roll the dice” to risk Minor participating in a contested

jurisdictional hearing that he did not understand. These statements showed an “impermissible shifting of the burden to the People to prove competence.”

The entirety of the record supports that the juvenile court applied the correct standard of review. (*People v. Price* (1992) 4 Cal.App.4th 1272, 1276 [“use of less than artful language [by the court] cannot be equated with having applied the wrong standard”].) The juvenile court had Minor present his case first, implying that he had the burden of proof. It referred to *R.V.* and stated on the record that it was Minor’s counsel’s burden to show that Minor was incompetent to stand trial. The juvenile court looked to the report by Dr. Jones wherein he found that Minor was marginally incompetent, and Minor’s expert Dr. Leark who found him incompetent. It concluded, “Based on the information given and provided to this Court, I believe it cannot be said with any degree of confidence that this minor is competent to stand trial.” The juvenile court applied the proper legal standard as to the burden of proof for competency.

The People additionally argue the trial court erred by failing to refer the matter to IRC as Minor was previously found to have a developmental disability as set forth in section 709, subdivision (f). They appear to contend that after finding Minor incompetent, the juvenile court should have determined whether IRC could provide any services to Minor.

Section 709, subdivision (f) provides, “If the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals . . . to evaluate the minor. The director of the regional center, or his or her designee, shall determine whether the minor is eligible for

services under the Lanterman Developmental Disabilities Services Act . . . and shall provide the court with a written report informing the court of his or her determination. The court's appointment of the director of the regional center for determination of eligibility for services shall not delay the court's proceedings for determination of competency."

Minor was sent for evaluation at IRC numerous times throughout the four-year period that the Petition was pending in juvenile court. On October 29, 2014, IRC evaluated Minor and found he did not qualify for their services. In early 2015, IRC's psychologist evaluated and tested Minor and found he had a developmental disability. Minor was also placed in SAFE through IRC in order for him to regain his competency; he received other services. In April 2016, IRC reported that Minor was making very little progress in SAFE. IRC also reported that it had a difficult time setting up meetings with Minor and his parents in order to prepare an IPP.

Here, the juvenile court had already sent the case to IRC for Minor's evaluation. IRC worked with Minor and provided services, which were largely unsuccessful. The People have failed to specify what further services IRC would have provided to Minor or how this previous referral to IRC did not satisfy section 709, subdivision (f). Even if somehow there was a further obligation to refer Minor to IRC under section 709, subdivision (f), which we do not find, the juvenile court did not abuse its discretion as IRC had been unsuccessful in treating Minor.

B. SECTION 782 DISMISSAL

Finally the People contend the juvenile court failed to provide adequate findings required pursuant to section 782 in dismissing the Petition.

“[T]he juvenile court is not only authorized, but obligated, in carrying out its duties under the Juvenile Court Law, to weigh and consider both the interests of the juvenile and the interests of society.” (*Derek L. v. Superior Court* (1982) 137 Cal.App.3d 228, 233.)

Welfare and Institutions Code section 782 provides, in pertinent part, “A judge of the juvenile court in which a petition was filed may dismiss the petition, or may set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation.” The People insist that neither the minutes from sentencing or the statements made by the juvenile court during sentencing showed it made such requisite findings.

Section 782, the only statutory authority relied upon by the People, does not state that such findings of the interests of society and welfare of the minor must be made explicitly on the record. In *In re Albert M.* (1992) 7 Cal.App.4th 353, 358-359, the only case relied upon by the People, an appellate court reversed the dismissal of a wardship petition because the juvenile court’s stated reasons did not “demonstrate that [it] made any of [the findings required by section 782], expressly or impliedly, before it exercised its discretion to dismiss the petition. The court merely noted that the matter had been continued many times, and that the minor had spent as much time in court as he would

have spent in juvenile hall if ‘convicted.’ This does not constitute a finding under . . . section 782.” (*Id.*, at p. 358.) The Court of appeal found the juvenile court’s statement that the minor had spent as much time in court as he would have spent in juvenile hall if convicted to be “inappropriate because it amounted to a prejudged disposition assuming the allegation against the minor was found true.” (*Id.*, at pp. 358-359.) The *Albert M.* court further stated, “The reasons orally given by the juvenile court and recorded in the reporter’s transcript do not demonstrate that the court made any of such findings, expressly or impliedly, before it exercised its discretion to dismiss the petition. The court merely noted that the matter had been continued many times, and that the minor had spent as much time in court as he would have spent in juvenile hall if ‘convicted.’ This does not constitute a finding under Welfare and Institutions Code section 782.” (*Albert M.*, at p. 358.)

In this case, the juvenile court’s statements at the proceeding dismissing the Petition support that it considered both the interests of justice and the welfare of Minor in dismissing the Petition as required by section 782. Initially, the juvenile court had presided over the case since its inception in 2013. It had before it the findings by the IRC that Minor suffered from a developmental disability; the original finding by Dr. Kania that Minor was incompetent; Dr. Suiter’s finding Minor was incompetent; and Dr. Leark’s finding that Minor suffered from a developmental disability. The juvenile court took the matter under submission in order to review all the evidence in the case.

Prior to taking the matter under submission, the juvenile court noted that it must consider the best course of action for Minor and protection of the community. It

specifically noted that Minor, who was out of custody, had no new allegations against him during the pendency of the Petition. On the day that the juvenile court made its ruling, it again referenced that it must consider the best interests of Minor and society. It noted that in four years Minor had shown no improvement and it saw no chance that he would improve in the foreseeable future. It encouraged Minor to continue counseling.

The record supports that the juvenile court considered all of the evidence in the case, it considered Minor's welfare and the potential impact on society if the Petition was dismissed. The juvenile court properly considered the factors in section 782 in dismissing the Petition.

DISPOSITION

We affirm the juvenile court order dismissing the Petition.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER

Acting P. J.

We concur:

SLOUGH

J.

RAPHAEL

J.